

J5F7FOWC

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

19 Cr. 254 (ALC)

5 REGINALD FOWLER,

6 Defendant.

7 -----x
8 New York, N.Y.
9 May 15, 2019
4:45 a.m.

10 Before:

11 HON. ANDREW L. CARTER, JR.

District Judge

12
13 APPEARANCES

14 GEOFFREY S. BERMAN

United States Attorney for the
Southern District of New York

15 BY: SHEB SWETT

16 DAVID ZHOU

Assistant United States Attorneys

17 NAT SCOTT ROSENBLUM

18 MICHAEL HEFTER

JAMES MCGOVERN

Attorneys for Defendant

20 ALSO PRESENT: Mohammed Ahmed, U.S. Pretrial
21 Todd McGee, F.B.I.

J5F7FOWC

(In open court)

(Case called)

MR. SWETT: Good afternoon, your Honor. Sheb Swett and David Zhou for the government, joined at counsel table by special agent Todd McGee of the F.B.I.

MR. MCGOVERN: Good afternoon, your Honor. Jim McGovern on behalf of Reginald Fowler. I'm joined here by Scott Rosenblum and Michael Hefter.

MR. AHMED: Good afternoon, your Honor. Mohammed Ahmed on behalf of pretrial services.

THE COURT: Good afternoon. OK, so this is Mr. Fowler's first appearance in front of me. Is this his first appearance in this district?

MR. SWETT: Yes, your Honor.

THE COURT: And was he previously informed of his rights when he was presented in the other district?

MR. SWETT: I believe he was, your Honor.

THE COURT: All right. And was he previously arraigned on the indictment?

MR. SWETT: He was not.

THE COURT: OK.

All right. Mr. Fowler, have you seen a copy of the superseding indictment that's been filed against you in this case?

THE DEFENDANT: Yes, sir.

J5F7FOWC

1 THE COURT: OK. Now, I see you standing to show
2 respect for the court. While that's nice, you don't need to do
3 that. The acoustics here aren't great. Why don't you just
4 stay seated so you can speak into the microphone and I can hear
5 everything you have to say.

6 Have you seen a copy of the superseding indictment
7 that's been filed against you?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And have you discussed it with your
10 attorney?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. The superseding indictment has
13 four counts. Count One charges a conspiracy to commit bank
14 fraud. It reads as follows: From at least in or about
15 February 2018, up to and including in or about October 2018, in
16 the Southern District of New York and elsewhere, Reginald
17 Fowler and Ravid Yosef, the defendants, and others known and
18 unknown, willfully and knowingly did combine, conspire,
19 confederate, and agree together and with each other to execute,
20 and attempt to execute, a scheme and artifice to obtain any of
21 the monies, funds, credits, assets, securities, and other
22 property owned by, and under the custody and control of, a
23 financial institution, by means of false and fraudulent
24 pretenses, representations, and promises, in violation of Title
25 18 United States Code, Section 1344, to wit, Fowler opened

J5F7FOWC

1 numerous U.S.-based business bank accounts at several different
2 banks, and in opening and using these accounts Fowler and Yosef
3 falsely represented to those banks that the accounts would be
4 primarily used for real estate investment transactions, even
5 though Fowler and Yosef knew the accounts would be used and
6 were in fact used by Fowler, Yosef, and others to transmit
7 funds on behalf of an unlicensed money transmitting business
8 related to the operation of cryptocurrency exchanges. In
9 violation of Title 18 United States Code, Section 1349.

10 Do you understand Count One, Mr. Fowler?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Count Two charges bank fraud. It reads as
13 follows: From at least in or about that same period of time,
14 in the Southern District of New York and elsewhere, that you,
15 and others known and unknown, willfully and knowingly, did
16 execute and attempt to execute a scheme and artifice to defraud
17 a financial institution, the deposits of which were then
18 insured by the Federal Deposit Insurance Corporation, and to
19 obtain money, funds, assets, securities, and other property
20 owned by, and under the custody and control of, such financial
21 institution by means of false and fraudulent pretenses,
22 representations, and promises, to wit, Fowler and Yosef opened
23 and used numerous bank accounts at financial institutions that
24 were insured by the Federal Deposit Insurance Corporation,
25 including a bank based in Manhattan, New York, and in so doing

J5F7FOWC

1 falsely represented to these financial institutions the
2 accounts would be primarily used for real estate investment
3 transactions even though Fowler and Yosef knew that the
4 accounts would be used, and was in fact used by Fowler, Yosef
5 and others, to transmit funds on behalf of an unlicensed money
6 transmitting business related to the operation of
7 cryptocurrency exchanges. Title 18 United States Code,
8 Sections 1344 and 2.

9 Do you understand Count Two, Mr. Fowler?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Count Three charges a conspiracy to
12 operate an unlicensed money transmitting business.

13 From in or about that same period of time, you and
14 others, known and unknown, willfully and knowingly did combine,
15 conspire, confederate, and agree together and with each other
16 to commit an offense against the United States, to wit,
17 operation of an unlicensed money transmitting business in
18 violation of Title 18 United States Code, Section 1960.

19 It was a part and object of the conspiracy that
20 Reginald Fowler, the defendant, and others known and unknown,
21 did knowingly conduct, control, manage, supervise, direct, and
22 own all or part of an unlicensed money transmitting business
23 affecting interstate and foreign commerce, in violation of
24 Title 18 United States Code, Section 1960.

25 Count Three charges the following overt act: In

J5F7FOWC

1 furtherance of the conspiracy, and to effect the illegal
2 objects thereof, Reginald Fowler, the defendant, together with
3 others known and unknown, committed the following overt act in
4 the Southern District of New York and elsewhere:

5 On or about August 8, 2018, Fowler opened a bank
6 account with a bank in Manhattan, New York, for the purpose of
7 conducting an unlicensed money transmitting business. Title 18
8 United States Code, Section 371.

9 Do you understand Count Three, Mr. Fowler?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Count Four, operation of an unlicensed
12 money transmitting business reads as follows: From at least in
13 or about that same period of time, the defendant, and others
14 known and unknown, did knowingly conduct, control, manage,
15 supervise, direct, and own all or part of an unlicensed money
16 transmitting business affecting interstate and foreign
17 commerce, in violation of Title 18 United States Code, Section
18 1960 and 2.

19 Do you understand that count, Mr. Fowler?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: In addition, there are forfeiture
22 allegations and a substitute asset provision. Have you seen
23 those and discussed those with your attorney?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And, counsel, have you discussed all of

J5F7FOWC

1 the counts as well as the forfeiture allegation and the
2 substitute asset provision with your client?

3 MR. MCGOVERN: Your Honor, yes. Generally we have
4 gone over the counts in the indictment and the possibility of
5 forfeiture.

6 Your Honor, I just have one question. I wasn't aware
7 that there was a superseding indictment. Is there a
8 superseding indictment?

9 THE COURT: What I have before me is labeled a
10 superseding indictment. Anything else from the government on
11 that?

12 MR. SWETT: No, there is a superseding indictment. I
13 believe it was unsealed not the day of Mr. Fowler's arrest but
14 perhaps three or four days after.

15 THE COURT: OK. What I am reading from is -- OK, let
16 me just find out.

17 MR. MCGOVERN: So, when Mr. Fowler was arrested the
18 government sent us a copy of the unsealed indictment, and
19 that's what we have been looking at. And from what I can tell
20 the superseder may have corrected some issues and provided a
21 little bit more detail, but we haven't seen that before today.
22 So, when we're answering these questions about the terms of
23 this indictment, we didn't even know there was a superseding
24 indictment. That's kind of our --

25 THE COURT: It very well may be the same thing. It

J5F7FOWC

1 doesn't have the same sort of caption that superseding
2 indictments frequently have. It's a document that was filed on
3 April 30, 2019, unless there is something else.

4 MR. SWETT: Your Honor, the superseding indictment
5 includes the same counts. It has another defendant Ravid
6 Yosef. To be candid, we obviously would have sent the
7 superseding indictment to defense counsel. When we unsealed
8 it, we erroneously assumed they were getting ECF alerts and
9 they would have seen it there. I know having spoken to
10 Mr. McGovern before this proceeding that they haven't actually
11 started getting those ECF alerts.

12 THE COURT: So, do you want to take a quick break then
13 and give counsel a chance to look at that? It seems like it
14 may very well be similar, but I will give counsel a chance to
15 look over that with your client.

16 Counsel, do you have it now?

17 MR. SWETT: I printed out a copy of the underlying
18 indictment, but I can pull up a copy on my phone.

19 MR. MCGOVERN: One of my colleagues has pulled one off
20 PACER. We just didn't know that they had superseded the
21 indictment. So, if we could have just a minute or two to go
22 over it. The substance of the counts seem to be the same as
23 before, so it's just a matter of making sure it's precise.

24 THE COURT: OK, I will be back.

25 (Recess)

J5F7FOWC

1 THE COURT: OK. So now, counsel, have you had a
2 chance to go over the superseding indictment with your client?

3 MR. MCGOVERN: Yes, I have.

4 THE COURT: And, Mr. Fowler, do you understand the
5 four counts in the superseding indictment?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Have you discussed those with your
8 attorney?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: All right. And, counsel, defense counsel,
11 do you have any doubts about your client's competence to
12 proceed?

13 MR. MCGOVERN: No, your Honor.

14 THE COURT: OK. Mr. Fowler, how do you plead to
15 Counts One through Four of the superseding indictment?

16 THE DEFENDANT: Not guilty, your Honor.

17 THE COURT: How do the parties wish to proceed?

18 MR. SWETT: Your Honor, the government is preparing
19 discovery right now. It's somewhat voluminous. It consists of
20 recordings made by the defendant in the government's
21 possession, statements the defendant made to the government,
22 e-mails that were recovered pursuant to search warrants, bank
23 records and phone subscriber and e-mail subscriber records that
24 were obtained pursuant to subpoena. It consists of some
25 documents that have been obtained from other witnesses in this

J5F7FOWC

1 case. And then finally at the time of the defendant's arrest
2 there was a search of his business. We have sort of collected
3 that material. It includes digital data as well as hard copies
4 of documents. And we are processing it right now. We would
5 request four weeks to produce discovery. We have discussed
6 this with defense counsel, and I believe they are amenable to
7 that schedule.

8 THE COURT: OK. Defense counsel, how do you want to
9 proceed?

10 MR. MCGOVERN: Your Honor, that sounds like a fine
11 plan for the production of discovery. We would waive speedy
12 trial time during this process. We have requested a plea offer
13 from the government. We have also made an oral Brady request
14 this morning for the production of all SARS filings by any of
15 the banks that are involved in this case that would have been
16 filed as a result of any of this alleged money transmitting
17 business, and also any SARS reporting on any other money
18 transmitting businesses accounts that were being used by these
19 banks for the same purposes. Other than that, we have agreed
20 upon a bond in this case, and we are in the process of
21 perfecting that bond with the security of real estate and some
22 cosigners.

23 THE COURT: OK. So how much time do you want before
24 the next court date? And I suppose along with that is where --
25 I don't need an address, but what state is Mr. Fowler residing

J5F7FOWC

1 in?

2 MR. MCGOVERN: Mr. Fowler lives in Chandler, Arizona,
3 your Honor.

4 THE COURT: So, how much time are you looking for,
5 counsel? The government will take four weeks to produce
6 discovery. I guess do you want another 60 days after that and
7 then come back then?

8 The other thing that we could do, or in addition to
9 that, since Mr. Fowler lives in Arizona, I will allow defense
10 counsel to waive his appearance at any status conference if all
11 we're going to be doing is just adjourning the case for another
12 date, unless counsel for the government wants to be heard on
13 that.

14 MR. SWETT: No, the government would not object to
15 that.

16 THE COURT: OK. And certainly Mr. Fowler if he wishes
17 can come to every status conference; he can appear by phone if
18 he would like to as well.

19 So, I don't think it makes sense to put the case off
20 for four weeks, because it's going to take the government that
21 long to produce the discovery. Defense counsel will need some
22 time to review this and engage in some discussions. Can we put
23 this case off towards the end of July? Is that enough time,
24 counsel?

25 MR. MCGOVERN: I think that would be good, your Honor.

J5F7FOWC

1 THE COURT: OK. So let's get a date towards the end
2 of July, Tara.

3 DEPUTY COURT CLERK: Friday, July 26 at 11:30?

4 THE COURT: Does that date and time work for everyone?

5 MR. SWETT: Yes, your Honor.

6 MR. MCGOVERN: Your Honor, that's Mr. Fowler's
7 daughter's birthday. Is it possible we could go earlier in
8 that same week?

9 THE COURT: Sure. How about the 31st?

10 MR. MCGOVERN: I think I'm unavailable that week, the
11 following week. The preceding week I'm fine.

12 THE COURT: How about the 24th, does that work?

13 MR. MCGOVERN: That should be fine.

14 MR. SWETT: That works for the government, your Honor.

15 THE COURT: OK. Do we have time on that day, Tara?

16 DEPUTY COURT CLERK: 10 a.m.

17 THE COURT: So July 24, ten a.m. for the next status
18 conference. Again, depending on where we are with the case, I
19 will allow defense counsel if he wants to to waive his client's
20 appearance and have Mr. Fowler appear by phone or not at all,
21 if counsel want to adjourn that. We will be adjourned to July
22 24. Based on the representations made in court, I find that
23 it's in the interests of Mr. Fowler and in the interests of
24 justice to exclude time under the Speedy Trial Act from today's
25 date until July 24. I further find that Mr. Fowler's interests

J5F7FOWC

1 and the interests of justice outweigh the public's interest in
2 a speedy trial, and I will enter an order to that effect.

3 Anything else from the government today?

4 MR. SWETT: Your Honor, we do consent to Mr. Fowler's
5 bail. He hasn't satisfied all of the conditions. Can we set a
6 two week target to satisfy all the remaining conditions of his
7 bail?

8 THE COURT: Defense counsel?

9 MR. MCGOVERN: Only that we will be filing our notices
10 of appearance on PACER, and Mr. Rosenblum is not admitted in
11 the Southern District of New York. He is in the process of his
12 pro hac application, so I just wanted to state that on the
13 record.

14 THE COURT: Do you have any objection to a two week
15 target date for perfecting the bond?

16 MR. MCGOVERN: No, your Honor.

17 THE COURT: So, let's set that date for two weeks from
18 today to perfect the bond. So let's have the bond perfected by
19 May 29. Anything else from the government?

20 MR. SWETT: No. Thank you, your Honor.

21 THE COURT: Anything else from the defense?

22 MR. MCGOVERN: No, your Honor.

23 THE COURT: OK. We are adjourned. Thank you.

24 (Adjourned)
25